SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1951.

No. 317.

THE DAY-BRITE LIGHTING, INC.,
Appellant,

vs.

STATE OF MISSOURI,
Appellee.

Appeal from the Supreme Court of the State of Missouri.

APPELLEE'S STATEMENT, BRIEF AND ARGUMENT.

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II.

DECISIONS OF COURTS BELOW.

A. State v. Day-Brite Lighting, Inc., 220 S. W. (2d) 782, St. Louis Court of Appeals, 1949 (R. 25).

B. State v. Day-Brite Lighting, Inc., 240 S. W. (2d) 886, Mo. Sup., 1951 (R. 37).

III.

JURISDICTIONAL STATEMENT.

Jurisdiction of this Court was invoked under the provisions of Section 1257 (2), Title 28, United States Code Annotated, Chapter 646, 62 Stat. 929. The Appellee has previously filed its statement opposing the jurisdiction of this Court, and incorporates that statement in this brief by reference.

IV.

ARGUMENT.

A.

Legislative History of Section 129.060, R. S. Mo. 1949.

The sole question presented in this case is the constitutionality of Section 129.060, R. S. Mo. 1949, which is as follows:

> "Any person entitled to vote at any election in this state shall, on the day of such election, be entitled to absent himself from any services or employment in which he is then engaged or employed, for a period of four hours between the times of opening and closing the polls; and such voter shall not, because of so absenting himself, be liable to any penalty; provided, however, that his employer may specify the hours during which such employee may absent himself as aforesaid. Any person or corporation who shall refuse to any employee the privilege hereby conferred, or shall discharge or threaten to discharge any employee for absenting himself from his work for the purpose of said election, or shall cause any employee to suffer any penalty or deduction of wages because of the exercise of such privilege, or who shall, directly or indirectly, violate the provisions of this section, shall be deemed guilty of a misdemeanor, and on con-

viction thereof be fined in any sum not exceeding five hundred dollars."

This statute was first enacted in Missouri in 1897 (Laws of Missouri 1897, page 108). In the Inaugural Address of Honorable Lon V. Stephens to the 39th General Assembly of the State of Missouri, the attention of the Legislature was called to the existence of an evil which was then prevalent throughout this country. Governor Stephens stated:

> "I call the attention of your honorable body to the coercion of employees by corporations and other employers of labor with a view to influencing their political action. Such coercion raises a question more serious and more vital than the money question, the tariff question or any other economical question however important dividing political parties. The question it presents is whether a free popular government shall be maintained in the United States. If coercion, moral or physical, such as we witnessed in the last campaign is to go unrebuked, government by the people is nearing its end and we are entering on an era of government by an oligarchy of opulent employers. I recommend the enactment of such laws as will not only protect the voter in the free exercise of his franchise, but will make it perilous for any man to interfere with his right."

(Page 7, Inaugural Address of Governor Lon V. Stephens to the 39th General Assembly, found in Appendix, House and Senate Journals of the 39th General Assembly, 1897.)

Thereafter, in the 39th General Assembly, House Bill No. 273 (Sections 129.060, 129.070 and 129,080, R. S. Mo. 1949) was introduced and the following comment relative

thereto is found in the **House Journal, 39th General Assembly**, at page 122:

"Mr. Bohart introduced House Bill No. 273, entitled

"An act to amend an act entitled 'An act to prevent corrupt practices in elections, to limit the expenses of candidates and political committees, and provide penalties and remedies for violation of this act,' approved March 31, 1893, by inserting between sections 4 and 5 three new sections, to be known as sections 4a, 4b and 4c;

"Which was read first time.

"Mr. Bohart submitted report from a committee appointed to report a bill on corrupt practices, as follows:

"Mr. Speaker: Your committee appointed to prepare and report a bill to this House providing against corrupt practices in elections, should such bill be necessary to the full protection of all the rights and privileges of any voter in this State,

"Begs leave to report the following bill, which they believe will, in connection with other laws of this State, fully and amply protect the constitutional rights of any and all persons entitled to vote at any election in this State, to a free and unmolested exercise of the voting franchise."

A study of the legislative history of this bill as disclosed by the House and Senate Journals indicates that the particular section in question (Section 120.060) was amended in only one respect. That amendment is found in the **House Journal**, 39th General Assembly, at page 329, and is as follows:

"Amend the bill as introduced by striking out all between the words 'penalty,' in the 6th line, and the word 'provided,' in the 7th line of section 4a."

Available records do not indicate the nature of the stricken matter. Other than as set out above, the only other references in the Journals to Section 129.060 are to formal matters during passage.

B.

The construction of a state statute by the State Supreme Court is binding upon the United States Supreme Court.

Throughout its brief Appellant argues that Day-Brite Lighting, Inc., did not violate the statute in question. The main contentions urged are that: 1) The statute is not applicable to hourly paid employees, and, 2) There was no deduction of wages of the complaining witness in this particular case.

However, this contention has been laid at rest by the proper Appellate Courts of the State of Missouri. The St. Louis Court of Appeals held that the Appellant was guilty of a violation of the deduction of wages section, and subsequently the Missouri Supreme Court ruled, in essence, that the statute was applicable to hourly paid employees and that the deduction of one and one-half hours' wages from the pay of the complaining witness was a violation of the provisions of the statute.

We think it unnecessary to set out a lengthy citation of authorities that the United States Supreme Court not only accepts, but is bound by the construction given to state statutes by the highest state courts. See **Aero Mayflower Transit Co. v. Bd. of R. R. Commrs.**, 332 U. S. 495; **Paterno v. Lyons**, 334 U. S. 314.

It is also important to note that these contentions are not to be found in Appellant's specification of such of the assigned errors as are intended to be urged. Since these contentions are so ably disposed of in the Missouri opin-

ions, and for the further reasons set out above, Appellee does not consider it necessary to further answer them.

We also desire to call the Court's attention to the fact that Appellant has drawn the issues by the statement in its brief (p. 7), which indicates that the only grounds which "need concern us here" are those relating to its contention, "that the statute violated Section 1 of the Fourteenth Amendment to the Federal Constitution by depriving Appellant of his property without due process of law; that it violated Section I of the Fourteenth Amendment by denying Appellant equal protection of the laws; and that it impaired the obligation of contracts in contravention of Section 10, Article I, of the United States Constitution."

C.

Other assignments of error.

The Appellant filed its Assignment of Errors on August 14, 1951 (R. 70). Subsequently, the Appellant adopted its Assignments of Error as its statement of Points to Be Relied Upon (R. 74).

In its brief, the Appellant set forth the specific errors which were to be urged (p. 9). These errors do not contain those numbered 5, 6, 7 and 8 in the Assignment of Errors (R. 72). However, these assignments were considered and fully answered by the Appellee in its statement opposing jurisdiction and also under Point B. Because these assignments have been disposed of in such manner and in view of the Appellant's statement concerning the questions which it considers to be of moment in this case (Appellant's brief, page 7), we submit that such matters are not before the Court, and, therefore, do not further specifically answer the above-mentioned assignments.

Another Assignment of Error appearing for the first time since the inception of this case is Appellant's argument which seems to imply that this statute is violative of Article I, Section 2, and Article I, Section 4, of the United States Constitution. It is submitted that nowhere in this record other than in the Appellant's brief (p. 19) can there be found any mention of these constitutional provisions. It is well-settled by the opinions of this Court that federal questions raised for the first time on appeal are raised too late and this Court has no jurisdiction to determine the same. (**Mo. Pac. R. Co. v. Hanna**, 266 U. S. 184; **Rogers v. Clark Iron Co.**, 217 U. S. 589; **Mallers v. Commercial Loan Investment Co.**, 216 U. S. 613).

In any event, Appellant points to no authority for its novel assumption and we submit that none of the cases interpreting these constitutional provisions support its view.

D.

In passing upon the constitutionality of an act the Court should indulge every presumption in favor of the constitutionality of the act, and the burden is on one assailing the constitutionality of legislation to prove this conclusion beyond all doubt.

The basic principle which underlies the entire field of legal concepts pertaining to the validity of legislation is that by enactment of legislation, a constitutional measure is presumed to be created. In every case where a question is raised as to the constitutionality of an act, the court employs this doctrine in scrutinizing the terms of the law. In a great volume of cases the courts have enunciated the fundamental rule that there is a presumption in favor of the constitutionality of a legislative enactment. Thus, the presumption of constitutionality of a statute dealing with a subject clearly within the scope of the police power

prevails in the absence of some factual foundation of record for declaring it to be unreasonable. All statutes are of constitutional validity unless they are shown to be invalid, and the courts will resolve every reasonable doubt in favor of the validity of the enactment. It has been said that every intendment is in favor of its validity, that it must be presumed to be constitutional unless its repugnancy to the Constitution clearly appears or is made to appear beyond a reasonable doubt; and that it is only where its invalidity is made to appear clearly, plainly, palpably, and by irrefragable evidence, where the case is so clear as to be free from doubt or the act is manifestly in contravention of the Constitution, and where all in all invalidity is disclosed in such a manner as to leave no reasonable doubt that the courts will declare it unconstitutional. Every rational and reasonable presumption must first be indulged in favor of the validity of the act **(11 Am. Jur., Section 128, page 776 ff).**

In consequence of the general presumption in favor of the validity of acts of the legislature and the desires of the courts in resolving all doubts in favor of their validity, the rule has become established that courts will not search the Constitution for express sanction or for reasonable implication to sustain a legislative enactment; the successful assailant must be able to point out the particular provision that has been violated and the ground on which it has been infringed. With regard to the duties cast upon the assailant of a legislative enactment, the rule is fixed that a party who alleges the unconstitutionality of a statute normally has the burden of substantiating his claim and must overcome the strong presumption in favor of its validity. It has been said that the party who wishes to pronounce a law unconstitutional takes on himself the burden of proving this conclusion beyond all doubt, and that a party who asserts that the legislature has usurped power or has violated the Constitution must affirmatively

and clearly establish his position. Consequently, those who affirm the unconstitutionality of an act of Congress must clearly show that the act is in violation of the provisions of the Constitution; it is insufficient merely to raise a doubt or show that the legislation is unwise **(11 Am. Jur., Section 132, page 795 ff)**.

One of the most firmly established groups of principles which has become cardinal and elementary in the field of constitutional law is that the propriety, wisdom, necessity, utility, and expediency of legislation are exclusively matters for legislative determination. The courts will not invalidate laws otherwise constitutional for any reasons such as these or declare statutes invalid because they may seem to the court to be detrimental to the best interests of the state. The remedy for the correction of unwise legislation remains solely in the people who, by making the necessary changes in the legislative body, may have the improvident or pernicious legislation of one legislature corrected by its successors. In other words, the legislature is the judge of the necessity, utility, and expediency of the appropriation of private property to a public use **(11 Am. Jur., Section 138, page 804 ff)**.

The general rule is that the question of the reasonableness of an act otherwise within constitutional bounds is for the legislature exclusively, and that in ordinary cases the courts have no revisory power concerning it nor any power to substitute their opinion for the judgment of the legislature. Mere unreasonableness does not necessarily render a statute unconstitutional. This rule does not mean that constitutional guaranties can be violated by unreasonableness. Thus, the courts may inquire whether an act of Congress is arbitrary or capricious, that is, whether it has reasonable relation to a legitimate end. If, however, there is room for fair debate as to whether a municipal ordinance is arbitrary or unreasonable, the court will not substitute

its own judgment for that of the legislative body charged with the primary duty and responsibility of determining the question. Courts are not at liberty to declare statutes invalid although they may be harsh, unfair, abused and misused, may afford an opportunity for abuse in the manner of application, may create hardships or inconvenience, or may be oppressive, mischievous in their effects, burdensome on the people, and of doubtful propriety. The courts are not the guardians of the rights of the people against oppressive legislation which does not violate the provisions of the Constitution. The protection against such burdensome laws is by an appeal to the justice and patriotism of the people themselves or of their legislative representatives. **(11 Am. Jur., Section 136, pages 802, 803).**

E.

The enactment of Section 129.060, R. S. Mo. 1949, is a constitutional exercise of the police power of the State.

By the enactment of Section 129.060, R. S. Mo. 1949, the General Assembly of the State of Missouri has voted to provide a means of insuring the greatest possible participation by the people in the election of their officers and in the expression of their opinion on matters of public interest. There can be no question but that the exercise of the voting privilege is one which is clothed with a public purpose, and, with full recognition of this, the Missouri Legislature enacted the statute now being assailed.

If the Missouri Legislature were alone among the forty-eight states to have determined the necessity for such legislation it might be said that the factual situation furnishing the background therefor should be re-examined. However, as will be seen from a table appearing in the Appendix, the Legislatures of almost half of our sister states have seen fit to enact similar laws, which are de-

signed to guarantee the untrammeled exercise of the voting privilege. Some sixteen or more of these statutes make it unlawful for the employer to dock an employee's wages during an absence under the statute. All the states have gone to great lengths to secure the right of the people to a free expression at the polls. Realizing that an evil in the form of employer domination existed, the chosen representatives of the people sought to correct this evil.

The method adopted was the exercise of the police power of the state, the power inherent in every sovereignty to protect not only its very existence, but also the security of the social order, the life and health of the citizens, the enjoyment of private and social life and the beneficial use of property.

No precise definition of the police power can be given, but the extent of its application has been stated by Mr. Justice Holmes, as follows:

> "It may be said in a general way that the police power extends to all the great public needs. Canfield v. United States, 167 U. S. 518, 42 L. Ed. 260, 17 Sup. Ct. Rep. 864. It may be put forth in aid of what is sanctioned by usage, or held by the prevailing morality or strong and preponderant opinion to be greatly and immediately necessary to the public welfare. * * *"
>
> **(Noble State Bank v. Haskell**, 219 U. S. 104, l. c 106.)

In any consideration of the principle of the legitimate extension of the police power it must be kept in mind that, so far as the General Assembly of Missouri is concerned, the State Constitution is not a grant of power, but is a limitation of power, and the Legislature is free to do anything that is not forbidden by the State or Federal

Constitutions. Therefore, except for the limitations imposed by the Federal or State Constitutions, the power of the State Legislature is unlimited and practically absolute, and that, therefore, it covers the whole range of legitimate legislation.

Section 25, Article I of the **Constitution** of the **State of Missouri**, provides:

> "That all elections shall be free and open; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage."

It was in keeping with the spirit of this mandate of the Constitution that Section 129.060, R. S. Mo. 1949, was enacted, and the Legislature, in effect, thereby declared that such legislation would more adequately secure free and open elections. This, we submit, was a valid exercise of the police power of the State, and one which, in principle, has the sanction of this Court.

F.

Section 129.060, R. S. Mo. 1949, is not unconstitutional as an impairment of the obligation of contract.

The Appellant sets forth a lengthy argument contending that the statute under consideration is an impairment of the obligation of contracts forbidden by Section 10, Article I, of the Constitution of the United States.

The Appellee submits that this argument fails for two reasons. First of all, the constitutional protection of the obligation of contracts is necessarily subject to the police power of the state, and, therefore, a statute passed in the legitimate exercise of the police power will be upheld, although it incidentally destroys existing contract rights **(12 Am. Jur., page 54, Section 421)**. In this connection see also the argument of Appellee under Point H.

This argument of the Appellant must fail for the further reason that the employment contract between the Appellant and its employees included the provisions of the laws in effect at the time of its making. The provision of the Constitution which declares that no state shall pass any law impairing the obligation of contracts does not apply to a law enacted prior to the making of the contract, the obligation of which is claimed to be impaired, but only to a statute of a state enacted after the making of the contract. The obligation of a contract cannot properly be said to be impaired by a statute in force when the contract was made, for in such cases it is presumed that it was made in contemplation of the existing law. Hence, a lease made subsequent to the enactment of a statute cannot be unconstitutionally impaired by such statute. The state, therefore, may legislate as to future contracts as it may see fit, and, accordingly, if a law is prospective only, it is valid. Although a statute tending to impair the obligation of a contract is inoperative as to contracts existing at the time of its passage, it may nevertheless be valid and operative as to future contracts **(12 Am. Jur., pages 15, 16, Section 387)**.

It is settled doctrine that the contract clause applies to legislation subsequent in time to the contract alleged to have been impaired **(Munday v. Wisc. Tr. Co., 252 U. S. 499)**.

G.

Section 129.060, R. S. Mo. 1949, is not a denial of the equal protection of the law.

Although necessarily involved in the discussion of the due process clause, the Appellee desires to set out briefly its answer to Appellant's argument that Section 129.060, R. S. Mo. 1949, is a denial of equal protection of the laws.

At the outset we desire to call the attention of the Court to the attitude of the Missouri Supreme Court as to the efficacy of this contention. "Section 11785 (129.060) is singularly free from the criticism leveled against it by this assignment. It applies with complete uniformity of duty and privilege, respectively, to all employers and to all employees, without regard to the method of computing their compensation" **(240 S. W. [2d] 893).**

The only case cited by Appellant to support its contention that this statute is a denial of the equal protection of the laws is that of **Truax v. Corrigan,** 257 U. S. 312. That case was decided in 1921 by a five to four decision with Justices Holmes, Pitney, Clarke and Brandeis dissenting. However, in that case both the majority and the minority opinions recognized the special classification of the relations of employers and employees as proper and necessary for the welfare of the community and requiring special treatment and as affording a constitutional basis for legislation applicable only to persons standing in that relation.

It is interesting to note the status of **Truax v. Corrigan** today. From the concurring opinion of Mr. Justice Frankfurter in **American Federation of Labor v. American Sash and Door Co.,** 335 U. S. 538, it becomes obvious that **Truax v. Corrigan** has met the same demise as the Allgeyer-Lochner-Adair-Coppage constitutional doctrine. Under these circumstances it can hardly be said that the application of the admittedly valid classification by the majority of the Court in **Truax v. Corrigan** supports the contention of the Appellant.

Employers, as distinguished from employees, do not constitute a class within the constitutional prohibition against class legislation. A statute applying to all employers similarly situated is not open to such suggestion **(12 Am. Jur., page 184, Section 503).**

It must be kept in mind that the statute now being considered is applicable to every employer and every employee in the State of Missouri. It must also be remembered that this statute was enacted as the legislative answer to a serious evil, which was the domination of political life by employers.

A fundamental principle involved in classification is that it must meet the requirement that a law shall affect alike all persons in the same class and under similar conditions. If a classification in legislation meets the prerequisites indispensable to the establishment of a class that it be reasonable and not arbitrary, and be based upon substantial distinctions with a proper relation to the objects classified and the purposes sought to be achieved, as long as the law operates alike on all members of the class which includes all persons and property similarly situated, it is not subject to any objections that it is special or class legislation, and is not a violation of the Federal guaranty as to the equal protection of the laws **(12 Am. Jur., page 144, Section 478)**.

Many other authorities could be cited to show how entirely free is this statute from the criticism leveled against it on the grounds of a denial of equal protection but the principles and authorities have been ably set forth in **Carmichael v. Southern Coal & Coke Co.**, 301 U. S. 495, and Appellee respectfully submits that the opinion of the Court in Carmichael disposes of this argument.

H.

Section 129.060, R. S. Mo. 1949, is not a deprivation of property without due process of law.

Under the most recent decisions of this Court, it is obvious that the attack of the Appellant upon this statute as a deprivation of due process because of an interference with freedom of contract is without merit. It is well-

established that freedom of contract is a qualified right and not an absolute right and this qualification on the liberty of the freedom to contract has long been recognized. However, for a certain period, the United States Supreme Court permitted the philosophy of laissez faire to direct the course of the application of this principle. This has become known as the Allgeyer-Lochner-Adair-Coppage constitutional doctrine. It was used to strike down various enactments of State Legislatures seeking to curb abuses and provide remedies for the evils which were an aftermath of the industrial revolution. However, later decisions of this Court steadily rejected this doctrine so that eventually the whole thought implicit therein was discredited and replaced by a newer, more enlightened and more realistic viewpoint.

> "This Court beginning at least as early as 1934, when the **Nebbia** case was decided, has steadily rejected the due process philosophy enunciated in the **Adair-Coppage** line of cases. In doing so it has consciously returned closer and closer to the earlier constitutional principle that states have power to legislate against what are found to be injurious practices in their internal commercial and business affairs, so long as their laws do not run afoul of some specific federal constitutional prohibition, or of some valid federal law. See **Nebbia v. New York**, supra, at 523-524, and **West Coast Hotel Co. v. Parrish**, supra, at 392-395, and cases cited. Under this constitutional doctrine the due process clause is no longer to be so broadly construed that the Congress and state legislatures are put in a strait jacket when they attempt to suppress business and industrial conditions which they regard as offensive to the public welfare."
>
> (Lincoln Federal Labor Union et al. v. Northwestern Iron & Metal Co. et al., 335 U. S. 525, l. c. 536.)

As to freedom of contract, the Court definitely asserted that this was a qualified right and not an absolute right guaranteed by the Constitution under any and all conditions in **West Coast Hotel Co. v. Parrish**, 300 U. S. 379, wherein it was stated at l. c. 392:

"'But it was recognized in the cases cited, as in many others, that freedom of contract is a qualified and not an absolute right. There is no absolute freedom to do as one wills or to contract as one chooses. The guaranty of liberty does not withdraw from legislative supervision that wide department of activity which consists of the making of contracts, or deny to government the power to provide restrictive safeguards. Liberty implies the absence of arbitrary restraint, not immunity from reasonable regulations and prohibitions imposed in the interests of the community.' * * *

"This power under the Constitution to restrict freedom of contract has had many illustrations. That it may be exercised in the public interest with respect to contracts between employer and employee is undeniable. Thus statutes have been sustained limiting employment in underground mines and smelters to eight hours a day * * *; in requiring redemption in cash of store orders or other evidences of indebtedness issued in the payment of wages * * *; in forbidding the payment of seaman's wages in advance * * *; in making it unlawful to contract to pay miners employed at quantity rates upon the basis of screened coal instead of the weight of the coal as originally produced in the mine * * *; in prohibiting contracts limiting liability for injuries to employees * * *; in limiting hours of work of employees in manufacturing establishments * * *; and in maintaining workmen's compensation laws * * *. In dealing with the relation of employer and employee, the legisla-

ture has necessarily a wide field of discretion in order that there may be suitable protection of health and safety, and that peace and good order may be promoted through regulations designed to insure wholesome conditions of work and freedom from oppression. * * *"

This Court also upheld the validity of the Minnesota Moratorium Law against the same constitutional objections as are being urged by the Appellant in this case. The Court recognized that the states retain adequate power which may be exercised for the promotion of the common weal, or which are necessary for the general good of the public, though contracts previously entered into between individuals may thereby be affected. This power is paramount to any rights under contracts between individuals (**Home Bldg. & L. Ass'n v. Blaisdell**, 290 U. S. 398, 437; see also **Block v. Hirsh**, 256 U. S. 135).

From the above, it is clear that Section 129.060 is a very legitimate exercise of the police power of the State of Missouri designed to provide for free and open elections.

When considering the constitutionality of state statutes under the due process clause, all that is necessary to sustain the validity of questioned acts is that they be a reasonable exercise of the police power. In the case of **Noble State Bank v. Haskell**, 219 U. S. 104, this Court stated, at l. c. 116:

"In answering that question, we must be cautious about pressing the broad words of the 14th Amendment to a drily logical extreme. Many laws which it would be vain to ask the court to overthrow could be shown, easily enough, to transgress a scholastic interpretation of one or another of the great guaranties in the Bill of Rights. They more or less limit the lib-

erty of the individual, or they diminish property to a certain extent. We have few scientifically certain criteria of legislation, and as it often is difficult to mark the line where what is called the police power of the states is limited by the Constitution of the United States, judges should be slow to read into the latter a nolumus mutare as against the lawmaking power.

"The substance of the plaintiff's argument is that the assessment takes private property for private use without compensation. * * * In the first place, it is established by a series of cases that an ulterior public advantage may justify a comparatively insignificant taking of private property for what, in its immediate purpose, is a private use. * * * And in the next, it would seem that there may be other cases beside the everyday one of taxation, in which the share of each party in the benefit of a scheme of mutual protection is sufficient compensation for the correlative burden that it is compelled to assume. See Ohio Oil Co. v. Indiana, 177 U. S. 190, 44 L. Ed. 729, 20 Sup. Ct. Rep. 576, 30 Mor. Min. Rep. 576. At least, if we have a case within the reasonable exercise of the police power as above explained, no more need be said."

The Legislature has the power and often exercises it to levy taxes and collect money in order to expend that money for a public purpose. The Legislature is also free to impose the tax burden upon whomsoever it sees fit, as long as it remains within the limitations of the Constitution. It is well-recognized in the country that the tax burden is not equally distributed upon all persons, nor do all the persons who pay taxes receive equal benefits from the expenditure thereof. For example, free textbooks are distributed in most states to school children, and this has been held not to be a violation of any constitutional provisions. (See **Cochran v. Louisiana State Board of Education**, 281 U. S. 370.)

And it is not unusual for the states to require employers to provide the means for the carrying out of a public purpose even though in the process there is a payment to individuals. In the case of **Carmichael v. Southern Coke & Coal Co.**, 301 U. S. 495, this Court said at l. c. 518:

> "The end being legitimate, the means is for the legislature to choose. When public evils ensue from individual misfortunes or needs, the legislature may strike at the evil at its source. If the purpose is legitimate because public, it will not be defeated because the execution of it involves payments to individuals. * * * 'Individual interests are aided only as the common interest is safeguarded.' * * *"

(See also **Steward Mach. Co. v. Davis**, 301 U. S. 548; **Helvering v. Davis**, 301 U. S. 619.)

In the case of **Mountain Timber Co. v. State of Washington**, 243 U. S. 219, the Supreme Court of the United States, in passing upon the validity of the Workmen's Compensation Act of the State of Washington, rather fully covered the argument on this point, and we set out at some length the quotation on that case:

> "As to the first point: The authority of the states to enact such laws as reasonably are deemed to be necessary to promote the health, safety, and general welfare of their people carries with it a wide range of judgment and discretion as to what matters are of sufficiently general importance to be subjected to state regulation and administration. Lawton v. Steele, 152 U. S. 133, 136, 38 L. Ed. 385, 388, 14 Sup. Ct. Rep. 499. **'The police power of a state is as broad and plenary as its taxing power.'** Kidd v. Pearson, 128 U. S. 1, 26, 32 L. Ed. 346, 352, 2 Inters. Com. Rep. 232, 9 Sup. Ct. Rep. 6. In Barbier v. Connolly, 113 U. S. 27, 31, 28 L. Ed. 923, 924, 5 Supt. Ct. Rep. 357, the court, by Mr.

Justice Field, said: 'Neither the (14th) Amendment—broad and comprehensive as it is—nor any other Amendment, was designed to interfere with the power of the state sometimes termed its police power, to prescribe regulations to promote the health, peace, morals, education, and good order of the people, and to legislate so as to increase the industries of the state, develop its resources, and add to its wealth and prosperity. From the very necessities of society, legislation of a special character, having these objects in view, must often be had in certain districts, such as for draining marshes and irrigating arid plains. Special burdens are often necessary for general benefits, for supplying water, preventing fires, lighting districts, cleaning streets, opening parks, and many other objects. Regulations for these purposes may press with more or less weight upon one than upon another, but they are designed, not to impose unequal or unnecessary restrictions upon anyone, but to promote, with as little individual inconvenience as possible, the general good. Though, in many respects, necessarily special in their character, they do not furnish just ground of complaint if they operate alike upon all persons and property under the same circumstances and conditions. Class legislation, discriminating against some and favoring others, is prohibited, but legislation which, in carrying out a public purpose, is limited in its application, if within the sphere of its operation it affects alike all persons similarly situated, is not within the Amendment.' * * * It hardly would be questioned that the state might expend public moneys to provide hospital treatment, artificial limbs, or other like aid to persons injured in industry, and homes or support for the widows and orphans of those killed. **Does direct compensation stand on a less secure ground?** A familiar exercise of state power is the grant of pensions to disabled soldiers and to the widows and de-

pendents of those killed in war. Such legislation usually is justified as fulfilling a moral obligation, or as tending to encourage the performance of the public duty of defense. * * *'" (Emphasis ours.)

From the above cases, it is easily seen that the authority of the states to enact such laws as reasonably are deemed to be necessary to promote the health, safety and general welfare of their people carries with it a wide range of judgment and discretion as to what matters are of sufficiently general importance to be subjected to state regulation and administration. Oftentimes in the sound discretion and judgment of the direct representatives of the people, legislation is sometimes thought to be necessary so as to encourage performances of public duties.

And in the instant case is found the following comment by the Supreme Court of Missouri, at l. c. 892:

"If the economic and physical welfare of the citizenry is within the police power of the state, then political welfare merits its protection also. The right of universal suffrage is the attribute of sovereignty of a free people. We accept as a verity that 'Eternal vigilance is the price of liberty.' For the vast majority the only opportunity to exercise that vigilance is in the polling place.

" 'That every citizen should be given both the right and the opportunity to vote is a matter of public interest, and any law having for its purpose the guarantee of such right and opportunity should be upheld if it is possible to do so. Such we take it was the legislative purpose of the enactment of Section 11785. And the purpose or legislative intent was not to financially enrich the voter or to place an unnecessary and unreasonable burden on the employer. * * *' State v. Day-Brite Lighting, Inc., supra, 220 S. W. 2d, loc. cit. 785."

The right of a free people to participate in political affairs is illustrated by the decision of the Circuit Court of Appeals for the First Circuit in the case of **Santiago v. People of Puerto Rico**, 154 Fed. Rep. (2d) 811, wherein the Court stated at l. c. 813:

> "* * * It merely prohibits discrimination against a laborer on account of his political affiliation. If it is reasonable to prohibit an employer from interfering with his employees' right to participate in a labor organization, National Labor Relations Board v. Jones & Laughlin, 301 U. S. 1, 57 S. Ct. 615, 81 L. Ed. 893, 108 A. L. R. 1352, it is at least no less reasonable to prohibit an employer from interfering with an employee's participation in a political party. Indeed, an employee's right to adhere to the tenets of the political organization of his choice is a basic right in any truly democratic society. To prevent discrimination by an employer against an employee because that employee chooses to join a particular political party serves to implement and enforce a right which is openly and proudly recognized and vigilantly defended in a democracy. Freedom of the employer is no more abridged in this instance than the freedom of the employer was abridged by the National Labor Relations Act. The statute as applied to the facts in the instant case does not constitute a violation of due process of law or of any clause of the Organic Act or Federal Constitution."

Similar legislation tending to encourage the performance of a public duty is that pertaining to privileges extended to veterans, and particularly we would like to call the attention of the Court to the provisions of the **Selective Training and Service Act of 1940**, and Section 8 thereof **(50 U. S. C. A. Appendix, Section 308)**. It will be noted that this section requires an expenditure by employers by

guaranteeing to veterans certain benefits which may have accrued while the veteran was in the service of his country and while he was not rendering any direct service to the employer. See **Fishgold v. Sullivan Dry Dock & Repair Court**, 328 U. S. 275; **Hall v. Union Light, Heat & Power Co.**, 53 Fed. Supp. 817; **Mentzel v. Diamond**, 167 Fed. [2d] 299).

Finally, it may be suggested that the only constitutional prohibitions or restraints which the Appellant has suggested for the invalidation of this statute are those notions of public policy imbedded in the early decisions of the United States Supreme Court, but which no longer have standing and are not the standards by which the constitutionality of economic and social programs of the states are to be determined (**Olsen v. Nebraska**, 313 U. S. 236).

I.

Collection of authorities dealing with the principle permitting employees time off for voting without penalty or deduction of wages.

Since the decision of the Missouri Supreme Court in the instant case, there has been a recent decision by the District Court of Ramsey County, Minnesota, in favor of the validity of the Minnesota statute providing for employees to absent themselves for the purpose of voting without a penalty of deduction from salary or wages. In a memorandum accompanying the finding of facts and conclusion of law, that Court stated that it had carefully read the authorities cited by the parties, and, in its opinion, the correct conclusion was arrived at by the Missouri Court. (See Appendix C.)

The decision in the instant case is also the basis for a comment in the November, 1951, issue of the **Nebraska**

Law Review (Vol. 31, No. 1, at page 97). Following an analysis of the authorities and the legal theory supporting the instant decision and those reaching an opposite conclusion, the writer of the comment concluded that the instant decision is clearly proper under existing rules of constitutional law as set forth by the United States Supreme Court.

In recent years the Courts which have considered the question of the constitutionality of statutes providing for time off to vote without penalty or deduction of wages have almost uniformly upheld the validity of such legislation. The only exception which research discloses is a decision by the Court of Appeals of Kentucky in the case of **Illinois Central Railroad Co. v. Commonwealth**, 204 S. W. (2d) 973 (1947). In that case, the Kentucky Court, after declaring its statute unconstitutional as in conflict with a provision of the Kentucky Constitution, went further to declare the statute unconstitutional as a denial of due process and equal protection of the laws. The Court based its conclusion on the authority of a case decided in 1923 by the Illinois Supreme Court (**People v. Chicago, M. & St. P. Ry. Co.**, 138 N. E. 155, 306 Ill. 486 [1923], 28 A. L. R. 610). The Illinois Supreme Court had declared invalid a statute containing similar language, but it seems worthy of note that the Court seemed to rest the entire matter on the proposition that the employee was engaged in a matter wholly limited to his own personal welfare. The Court failed to recognize the obvious contribution to the general welfare by the broadening of the base of the electorate.

The holding of the Illinois Supreme Court remained the law in that State until the decision of the Illinois Supreme Court in the case of **Zelney v. Murphy**, 56 N. E. (2d) 754, 387 Ill. 492 (1944), which upheld the validity of the Unemployment Compensation Act of Illinois. When urged to apply the reasoning of the 1923 decision, the Court

recognizing the trend of judicial thought in similar matters, refused to follow its earlier decision, stating as follows, at l. c. 757:

> "It is urged that the State may not take private property nor money for a private use and that the act as a whole violates sections 1, 2, 13 and 20 of Article II of the State constitution and section I of the fourteenth amendment to the Federal constitution; and the case of People v. Chicago, M. & St. P. R. Co., 306 Ill. 486, 138 N. E. 155, 158, 28 A. L. R. 610, is cited in support of such contention. The statute there, as questioned, provided a penalty for any employer who made a deduction in wages for a period of two hours used by such employee in voting at any general or special election and the court held that it was not the constitutional right of any citizen to be paid for the time consumed in exercising the right to vote. The court further said: ' "No exercise of the police power can disregard the constitutional guaranties in respect to the taking of private property, due process and equal protection" of the laws.' This holding was approved in McAlpine v. Dimick, 326 Ill. 240, 157 N. E. 235. **However, this statute, re-enacted and amended from time to time, still contains this provision providing for the right of any citizen to be paid for the time consumed in exercising his right to vote. These cases, of course, could not be controlling as to the statute under consideration here and especially in view of the growing appreciation of public needs and of the necessity of finding ground for a rational compromise between individual rights and public welfare. The growing complexity of our economic interests has inevitably led to an increased use of regulatory measures in order to protect the individual so that the public good is reassured by safeguarding the economic structure upon which the good of all depends.**" (Emphasis ours.)

In comment upon the opinion of the Supreme Court of Illinois in **Zelney v. Murphy**, the editor of the **C. C. H. Labor Law Journal** in the issue for June, 1950 (Vol. I, No. 9), said, l. c. 751:

> **"(In the 1923 case, the Illinois Supreme Court did hold unconstitutional a prior provision that no deduction could be made from the employee's usual salary or wages on account of the time off allowed for voting. Nevertheless, this provision was re-enacted without substantial change in 1933, and again in 1943, and the Illinois Supreme Court has not directly passed upon either re-enactment. However, in a recent case under the Illinois Unemployment Compensation Act in Zelney v. Murphy, C. C. H. Unemployment Insurance Reports, Ill. § 8212 (September 19, 1944), the Illinois court referred to its 1923 decision, and in declining to apply that rule to the Unemployment Compensation Act, indicated that a more liberal interpretation might be made at this time. There is, therefore, no assurance that the current provision against deduction from an employee's usual salary or wages for time off to vote would again be held unconstitutional.—Editor.)"**

This indication of a changed attitude on the part of the Illinois Supreme Court has also been noted in a leading law review article on the principle involved in the instant case. See 47 **Columbia Law Review** 135.

However, the Kentucky Court failed to note this change in judicial attitude and thus, we submit, based its decision on a holding in an Illinois case which has since been repudiated by the Illinois Supreme Court.

In the case of **People v. Ford Motor Co.**, 63 N. Y. S. (2d) 697, 271 App. Div. 141 (1946), the Appellate Division of the Supreme Court of the State of New York upheld the constitutionality of a similar statute stating as follows:

"The statutes in question, in force for more than half a century, deal directly with a detail as to the exercise of the elective franchise—a subject matter which, under our form of government, is in itself a primary act of sovereignty. To take measures to insure the full and free performance of that act is therefore in the interest of the general welfare, and as such may be said to call forth 'society's natural right of self defense' which is inherent in sovereignty itself and which has been generally termed the police power. 11 Am. Jur., Constitutional Law, Sec. 247, p. 973. In Barrett v. State of New York, 220 N. Y. 423, at page 428, 116 N. E. 99, at page 101, L. R. A. 1918C, 400, Ann. Cas. 1917D, 807, it is stated:

" 'The state may exercise the police power "wherever the public interests demand it, and in this particular a large discretion is necessarily vested in the Legislature to determine, not only what the interests of public require, but what measures are necessary for the protection of such interests. * * * To justify the state in thus interposing its authority in behalf of the public, it must appear, first, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals." Lawton v. Steele, 152 U. S. 133, 136, 14 S. Ct. 499, 501, 38 L. Ed. 385.'

"An employer-employee relationship may be said to have in it such a power of dominance on the part of the employer as is capable of thwarting the wholesome exercise of the right to vote at an election. The fact that such abuses have occurred is historical. To avoid such evils, to encourage the right of suffrage, to keep it pristine and render it efficient—all this pertains to the public welfare and, in the attainment of those

objectives, the burden which the statutes cast upon all in the role of an employer is one lawfully placed in a design for the common good, and the burden is so slight that it may not be said to be unduly oppressive. That the burden may bear unequally does not render its placement unlawful. Chamberlin, Inc., v. Andrews, 271 N. Y. 1, 2 N. E. 2d 22, 106 A. L. R. 1519."

(In the dissenting opinion of Mr. Justice Black in the case of **United Public Workers v. Mitchell**, 330 U. S. 111, 91 L. Ed. 754, is found the following, l. c. 778: "The right to vote and privately to express an opinion on political matters, important though they be, are but parts of the broad freedoms which our Constitution has provided as the bulwark of our free political institutions. Popular government, to be effective, must permit and encourage much wider political activity by all the people. * * * *" "Note 6 —Some states require that employers pay their employees for the time they spend away from work while voting. See People v. Ford Motor Co., 271 App. Div. 141, 63 N. Y. S. 2d 697; Note, Pay While Voting, 47 Col. L. Rev. 135 [1947]."")

Although the Court did not directly consider the constitutionality of the New York time off for voting statute, that statute was involved in the case of **Lee v. Ideal Roller & Manufacturing Co.**, 92 N. Y. S. (2d) 726, wherein the Court stated, at l. c. 730:

> "**Section 226 of the Election Law was enacted to protect the earning capacity of employees (voters and their standing and position in their place of employment which is so vital to the maintenance and continuance of free elections.** Any deprivation of income to the voter which he would otherwise normally receive would be in violation of this statute.
>
> "It is conceded by the defendant that if the plaintiffs had actually worked eight hours on Election Day,

with two additional hours off to vote, the plaintiffs would be entitled to two hours pay at overtime rate for that day. In other words, the two hours voting time off allowed on Election Day would be included in the computation of overtime pay for that day as time worked. The Attorney General is of the opinion that employees who absent themselves on Election Day are entitled to receive the same wage they would have received had they actually remained on the job. Opinion, Attorney General, January 15th, 1941. The section of the Election Law in question applies to weekly, daily, hourly or piece-work wage earners, and no deduction may be made in wage or salary paid any such employee by an employer for the two hours absence during voting time on Election Day. Opinion, Attorney General, January 15th, 1941." (Emphasis ours.)

The constitutionality of the California statute on this question was upheld in the case of **Ballarini v. Schlage Lock Co.**, 226 Pac. (2d) 771. See also **Kouff v. Bethlehem Alameda Shipyard**, 202 Pac. (2d) 1059.

So far as can be ascertained, the most comprehensive discussion of the constitutionality of statutes permitting employees time off for voting is to be found in a note in 47 **Columbia Law Review** 135. Because of its very concise and lucid presentation, we have set out somewhat extensively the thought of this article in the Appendix.

CONCLUSION.

Upon this appeal the Appellant has assailed the constitutionality of Section 129.060, R. S. Mo. 1949. It is a fundamental rule that all statutes are presumed to be of constitutional validity unless repugnancy to the Constitution clearly appears or is made to appear beyond a reasonable

doubt. In this connection the rule is fixed that a party who alleges the unconstitutionality of a statute takes on himself the burden of proving this conclusion beyond all doubt.

It is a cardinal principle in the field of constitutional law that the propriety, wisdom, necessity, utility and expediency of legislation are exclusively matters for legislative determination and Courts will not invalidate laws otherwise constitutional for any reasons such as these. The remedy for the correction of unwise legislation remains solely in the people and is not within the province of the Courts. This is so even though statutes may be harsh, unfair, abused and misused, or may create hardships or inconvenience. A Court is not free to substitute its own judgment for that of the legislative body in the determination of the reasonableness of a statute even though it may appear to the Court to be detrimental to the best interest of the state. That is the prerogative of the Legislature and in a system of divided powers such as ours so it must remain.

We believe it has been clearly shown that the constitutional doctrine which the Appellant seeks to have the Court apply in the instant case is one which has been expressly overruled and is no longer considered as a standard for the determination of the constitutionality of legislation. The Appellee has fully answered the argument of Appellant and submits that Section 129.060 is a valid exercise of the police powers of the state.

In conclusion, the Appellee respectfully submits to this Court that the Appellant has failed to overcome the presumption of the constitutionality which attaches to an enactment of the Legislature, and, further, the Appellee has clearly shown that under applicable principles of constitutional law, Section 129.060 is valid in all respects,

therefore, we pray this Court to affirm the judgment entered below.

Respectfully submitted,

J. E. TAYLOR,
Attorney General of Missouri,

JOHN R. BATY,
Assistant Attorney General of Missouri,

Supreme Court Building,
Jefferson City, Missouri,
Attorneys for Appellee.

APPENDIX.

A.

The following is a table listing states which have statutes similar to Section 129.606, R. S. Mo. 1949, and a tabulation of the principal features thereof (taken from C. C. H. Labor Law Journal, May issue, 1950):

State	Length of Time	Hours of Absence	Can Employee Be Docked?
Alabama	no provision		
Alaska	no provision		
Arizona	two hours	specified by employer	general election—no
Arkansas	after quitting time (not later than 4 P. M.)	specified by state	law not specific
California	two hours	not specified; election officers may be absent all day without suspension or discharge	general election—no direct primary—no presidential primary—no
Colorado	two hours	specified by employer	general election—no, unless pay is by the hour
Connecticut	no provision		
Delaware	no provision		
D. of C.	no provision		
Florida	no provision		
Georgia	no provision		
Hawaii	no provision		
Idaho	no provision		
Illinois	two hours	specified by employer	general election—no
Indiana	four hours	mutual agreement	general, national, state or county election—no
Iowa	two hours	specified by employer	general election—no
Kansas	two hours	specified by employer	general election—no
Kentucky	four hours	specified by employer	all elections—yes
Louisiana	no provision		
Maine	no provision		
Maryland	"reasonable" time, not over four hours	not specified	not specified
Massachusetts	two hours	first two hours after opening of polls	not specified
Michigan	no provision		
Minnesota	law not specific	specified by state "during the forenoon"	all elections—no
Mississippi	no provision		

State	Length of Time	Hours of Absence	Can Employee Be Docked?
Missouri	four hours	specified by employer	all elections—no
Montana	no provision		
Nebraska	two hours	specified by employer	all elections—no
Nevada	three hours in places that operate on legal holidays; otherwise all day	not specified	not specified
New Hampshire	no provision		
New Jersey	no provision		
New Mexico	two hours	specified by employer	no
New York	two hours; special rules for primaries	employer may specify hours	not if voter uses two hours specified or if hours are not specified by employer
North Carolina	no provision		
North Dakota	no provision		
Ohio	two hours	specified by employer	all elections—no
Oklahoma	two hours, unless more time is needed	specified by employer	not specified
Oregon	no provision		
Pennsylvania	no provision		
Puerto Rico	no provision		
Rhode Island	no provision		
South Carolina	no provision		
South Dakota	two hours	specified by employer	all elections—no
Tennessee	no provision		
Texas	"reasonable" and "fair"	specified by employer	statute—no Atty. Gen. Op.—yes
Utah	two hours	specified by employer	general election—no, unless pay is by the hour
Vermont	no provision		
Virginia	no provision		
Washington	no provision		
West Virginia	three hours, unless more is necessary	not specified	"primary or convention"—no
Wisconsin	three hours; special for "cities of the first class" in city primaries	specified by employer	yes
Wyoming	one hour other than lunch hour	not specified	all elections—no

B.

The following is from a note in 47 Columbia Law Review 135, beginning at page 137:

"The problem of pay while voting should be considered against its proper background of constitutional decisions in the field of labor regulation. The primary problem posed is one of due process, as the equal protection and the contract clauses of the Constitution no longer appear to offer barriers to the statutes, but are principally used for the purpose of bolstering a due process attack upon the constitutionality of such legislation.

"There is ample precedent for the proposition that, in the public interest, the legislature can interfere with freedom of contract in regard to agreements between employers and employees without violating due process requirements. Statutes regulating the time, manner and amount of payment of employees have on many occasions withstood constitutional attack. The employer can be required to pay his employees at fixed periods, and to pay them in cash instead of scrip. In 1937 the Supreme Court swept away the constitutional barriers to minimum wage legislation in **West Coast Hotel Co. v. Parrish**, overruling earlier views that such regulations interfered with freedom of contract and thus violated due process.

"The pay while voting requirement bears a considerable resemblance to minimum wage legislation. There is a marked similarity between requiring an employer to pay a minimum wage totaling a fixed amount per week for 40 hours work and compelling him to pay the same amount for 38 hours work during a particular week in the year. The chief differences are in the purposes of the legislation, and the requirement of payment for a period in which the employee performs no services.

"The fact that the employer is compelled to pay wages for a period of time during which the employee performs no services presents a novel problem, which would assume even broader proportions if legislation requiring employers to grant vacations with pay were passed in this country. The contention that eminent domain principles are applicable is likely to be rejected. Many statutes imposing a financial burden upon employers, without compensation, have been upheld as a valid exercise of the regulatory power.

"There has in recent years been a substantial expansion of the interests in the advancement of which state legislatures may take action under the regulatory power. The conception of public welfare, which is recognized as an end justifying the exercise of this power, has been extended and the broader conception would furnish the basis for sustaining a statute designed to promote the full exercise of the right of suffrage. Certainly, if the economic and physical well-being of the community are important considerations warranting the use of the legislative power there is no reason why its 'political' welfare should not be accorded similar protection. Exercise of the right to vote is the most basic function of self-government and its importance has been re-emphasized in recent decisions of the courts. Some democratic countries have even gone so far as to make the casting of a ballot a legal duty.

"An extremely strong presumption operates in favor of the constitutionality of statutes regulating economic matters. Whatever may be the wisdom of pay while voting statutes, they do not appear so arbitrary or unreasonable as to violate due process requirements. The burden imposed on the employer is relatively slight and the interest subserved, the right to vote, relatively high. Although it may be contended that the

measures are not actually required to promote the announced ends, since the employee's right to vote can adequately be protected by assuring him sufficient time off without compensation, this question of choice of means is best left to legislative judgment. The present reluctance of the courts to substitute their judgment in the economic realm points the way to the constitutionality of pay while voting statutes."

C.

For the convenience of the Court the Appellee sets forth the proceedings of the following case taken from a certified photostat of the original Findings of Fact, Conclusions of Law and Memorandum, dated the 20th day of December, 1951, and attested to by the Deputy Clerk of Ramsey County, State of Minnesota:

DISTRICT COURT, SECOND JUDICIAL DISTRICT.

File #271418.

State of Minnesota,
County of Ramsey.

S. A. Erikson, J. P. Phillips, H. J. Wigley and D. W. Peterson on their own behalf and on behalf of other persons similarly situated,

Plaintiffs,

vs.

Northern Pacific Railway Company, Defendant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

This matter came on for hearing before the Court without a jury on the 12th day of December, 1950. William D. Gunn, Esq., appeared for the plaintiffs, and Messrs. M. L. Countryman, Jr., Esq., E. F. Requa, Esq., and F. S. Farrell,

Esq., as counsel for the defendant. The case was submitted to the Court upon a written stipulation of facts, and the exhibits referred to in said stipulation were offered in evidence. Objections were made by the plaintiffs to the materiality of the exhibits, and the same were received subject to the objections, and subject to a motion to strike. The objections to the introduction of the exhibits are hereby overruled, and the motion to strike the same is denied.

The Court adopts as his

Findings of Fact

the stipulation of facts filed herein, and the exhibits therein referred to, and the Court finds the facts to be in accordance with the said stipulation, and the exhibits. As

Conclusions of Law

the Court finds that the plaintiffs are entitled to a declaratory judgment, or judgment of declaration, that the plaintiffs, and other persons for whom this action is brought, are entitled to compensation for the periods during the forenoon of November 2nd, 1948, during which they absented themselves from work for the purpose of voting in a State election held on that day, but only for such period of time during the said forenoon that they reasonably and necessarily needed for said purpose, and that Sec. 206.21, M. S. '45, now known as Sec. 206.21, M. S. '49, is a valid and constitutional statute of the State of Minnesota, and further that the plaintiffs are entitled to judgment for their costs and disbursements herein.

Let Judgment Be Entered Accordingly.

A stay of forty days is entered.

Dated May 31, 1951.

Arthur A. Stewart,
District Judge.

Memorandum.

This action is brought under the provisions of Sec. 206.21, M. S., which reads as follows:

> "Every person entitled to vote at an election shall be permitted to absent himself from his work for that purpose during the forenoon of each election day, without a penalty or deduction from salary or wages on account of such absence."

The defendant contends that the act should be construed so as not to apply to employees who are compensated for their services on an hourly, piece or commission basis, the employees in question all being paid under a contract providing for compensation figured on an hourly basis. The act, in similar forms, has been on the statute books of Minnesota since 1893. There have been several amendments in the interim. The defendant quoted, in support of its argument, two letters of the Attorney General directed to the Minnesota Federation of Labor in 1921 and in 1922. These two letters of the Attorney General support the defendant's argument. However, there was a later opinion by the same officer addressed to the City Attorney of Minneapolis in November, 1950, which does not follow the opinions expressed in the former letters of the Attorney General.

The practical construction of a law by the authorities charged with its enforcement, and by the public generally, is an element of importance to be considered by the Court in determining the meaning of an ambiguous statute. It does not seem to me that there is any ambiguity in this statute. It plainly says that there shall be no penalty or deduction from salary or wages on account of such absence. Some Courts have attempted to make technical distinctions between salary and wages, but what appeals to me to be the better line of reasoning by the Court is that the two words are synonymous when used together,

and intended to cover all compensation for services rendered by an employee to his employer. (See Words and Phrases—title "Wages.") Furthermore, the letters of the Attorney General are not opinions directed to any state official or any city or county official charged with the enforcement of the law, but are merely expressions of opinion addressed to the Federation of Labor. On the other hand, it appears from the stipulation that the parties in this case had previously contracted in substantially the same language as the contract of employment now before the Court, and under the previous contracts the defendant has paid employees for the time taken off to vote. In fact it has in the past paid employees of the very type covered by this action. The defendant and its employees have, for a long time, accepted the act as a binding act, and apparently treated it as part of their contract.

The principal argument of the defendant is directed at the constitutionality of the act. Although acts of this kind exist in and about one-third of the states, there is a very small number of authorities on the subject of their constitutionality, and there is division among those authorities. It would serve no useful purpose for a trial judge to write an exhaustive opinion on a subject of this kind. The Court has carefully read the authorities cited by the parties, and in its opinion the correct conclusion was arrived at by the Missouri Court.

Stewart, J.